

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case No. 03-CR-216

TORIANO SMITH,
Defendant.

DECISION AND ORDER

Defendant Toriano Smith moves for a sentence reduction under 18 U.S.C. § 3582(c)(2) based on the Sentencing Commission's 2007 amendments to the crack cocaine guidelines. Section 3582(c)(2) provides:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2). The Commission designates guideline amendments for retroactive application in the policy statement set forth at U.S.S.G. § 1B1.10(c). The 2007 crack amendments are listed in § 1B1.10(c), making defendants sentenced under the old crack guidelines eligible for a sentence reduction under § 3582(c)(2).

Defendant Smith pleaded guilty to distribution of crack cocaine, but he was not sentenced under the crack cocaine guideline, U.S.S.G. § 2D1.1(c). Rather, based on his prior convictions for drug and violent crimes, he was sentenced under the career offender guideline, U.S.S.G. § 4B1.1. Defendant concedes that the Commission has made no retroactive changes to § 4B1.1. For a variety of reasons, he argues that I nevertheless may

reduce his prison term. However, because his sentencing range has not been "lowered" as required by § 3582(c)(2), and for the reasons set forth more fully in United States v. Biami, No. 95-CR-93 (E.D. Wis. Apr. 22, 2008) (Order denying identical § 3582(c)(2) motion), which I incorporate herein by reference, I find defendant ineligible for a sentence reduction.

THEREFORE, IT IS ORDERED that defendant's motion is **DENIED**.

Dated at Milwaukee, Wisconsin, this 29th day of April, 2008.

/s Lynn Adelman

LYNN ADELMAN
District Judge